

APPEAL 020892  
FILED MAY 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 25, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable injury on \_\_\_\_\_ (all dates are 2001 unless otherwise noted); that because the claimant had not sustained a compensable injury, the claimant did not have disability; and that the claimant had not timely reported her injury to the employer pursuant to Section 409.001 and did not have good cause for failing to do so.

The claimant appeals, contending that some of the hearing officer's findings are "incongruous," that the claimant had timely reported her injury to the employer, and that the claimant had sustained a compensable injury and had disability. The respondent/cross-appellant (self-insured) appeals the hearing officer's finding that the claimant had "sustained damage or harm to the physical structure of the body" (i.e., an injury but not a compensable injury) and that the claimant "had been unable to obtain employment at wages equivalent to her preinjury wage." Both parties filed responses to the other party's appeal.

DECISION

Affirmed.

The claimant was employed as a custodian at one of the self-insured's facilities. The claimant testified that on the evening of \_\_\_\_\_, she injured her right shoulder and arm throwing some trash into a dumpster. The claimant alleges that she reported her work-related injury to her supervisor that same evening and again about a week later in a telephone call from her supervisor. While it is undisputed that the claimant did speak with her supervisor the evening of \_\_\_\_\_, what was said is certainly disputed as is testimony that the claimant's arm was hurting when she came to work on \_\_\_\_\_ and that she may have injured her arm at home helping her ill father. The claimant has not worked since \_\_\_\_\_ and alleges disability from \_\_\_\_\_ to the date of the CCH.

The hearing officer made the following appealed findings, which the claimant considers incongruous with the hearing officer's decision:

**FINDINGS OF FACT**

2. Claimant sustained damage or harm to the physical structure of her body while in the course and scope of her employment on \_\_\_\_\_.

3. As a result of the claimed injury, Claimant has been unable to obtain or retain employment at wages equivalent to her pre-injury [w]age from \_\_\_\_\_, 2001, and continuing through the date of the hearing.

In Finding of Fact No. 2, the hearing officer was using the terminology of injury as set out in Section 401.011(26). Because a claimant has an injury does not necessarily mean that the injury is compensable. In Finding of Fact No. 3, the hearing officer merely finds that the claimant is unable to obtain and retain employment because of the claimed injury. When considered as a whole, the hearing officer clearly was saying that while the claimant had sustained an injury on \_\_\_\_\_ and has been unable to work since that time, the claimant's injury is not compensable because she failed to give timely notice of the injury to the self-insured and did not have good cause for failing to do so. The hearing officer's findings are consistent with his conclusions of law and decision.

On the issue of timely notice to the self-insured, as previously indicated, we are aware that the claimant contends that she gave notice of her injury to her supervisor. However, there was conflicting evidence; the supervisor denied that the claimant gave notice of a work-related injury either on \_\_\_\_\_ or sometime later in a telephone call. Further, the hearing officer notes that the claimant's "testimony was inconsistent with prior statements she made during investigation of her claim." Similarly, evidence whether the claimant had sustained an injury on \_\_\_\_\_, or at home on some prior date, was conflicting.

There was conflicting evidence presented at the hearing on the issues. The hearing officer weighed the credibility and inconsistencies in the evidence, and the hearing officer's determination on the issues is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, the hearing officer's decision and order are affirmed.

The following information was presented at the CCH.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MF  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

Texas Workers' Compensation Commission records indicate that the street address for the self-insured is

**MF  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Robert E. Lang  
Appeals Panel  
Manager/Judge